

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

OAH No. 2015070280

DECISION

This matter came on regularly for hearing on August 26, 2015, in Los Angeles, California, before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Claimant was represented by his mother, who is also his authorized representative. (Names are not used in order to protect their privacy.)

Frank D. Lanterman Regional Center (Service Agency) was represented by Pat Huth, Attorney at Law.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

ISSUE

Is Claimant eligible for regional center services?

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EVIDENCE RELIED UPON

Service Agency's exhibits 1 through 10; testimony of Service Agency witnesses Hasmig Mandossian, Dr. Thomas Carillo, and Maria Tapia-Montes; and testimony of Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a nine-year old male seeking regional center services. He resides with his parents and three siblings. Claimant's mother brought him to the Service Agency for determination of his eligibility for services based on the recommendation of Claimant's school district.

2. As described in more detail below, Service Agency evaluated Claimant and determined he was not eligible for services. Service Agency notified Claimant's mother of its decision in a letter dated June 17, 2015 (exhibit 2). Claimant's mother submitted a Fair Hearing Request form dated July 7, 2015 (exhibit 3).

3. Claimant has attended the UCLA Community School in the Los Angeles Unified School District for five years. In December 2014 he was assessed and determined eligible for special education services. In a letter dated February 11, 2015, the UCLA Community School wrote that Claimant was eligible under the category of "Specific Learning Disability," that severe discrepancies existed in the following academic areas: oral expression, reading comprehension, written expression, math calculation, and math reasoning; and that these discrepancies are the result of disorders in auditory processing and cognitive abilities including association, conceptualization and expression. (Exhibit 8)

4. The school district performed a psychoeducational assessment and reported the results on December 9, 2014 (exhibit 7). A school psychologist reviewed educational records, observed Claimant in interview and classroom settings, interviewed Claimant's mother and teacher, and administered various standardized tests. Claimant's parents speak an indigenous Mexican language, with Spanish as a second language. Claimant was initially placed in English Learner status, and later placed in a dual language program. The psychologist estimated that Claimant's cognitive ability was in the average range, with certain areas of strength and other areas of needs and challenges. Visual processing was average, and auditory processing was below average. Claimant was working below grade level in mathematics, reading comprehension and written language skills. Various tests revealed that Claimant had limited vocabulary, had difficulty expressing himself, and had limited listening ability, both in English and in Spanish. Claimant is distractible and needs reminders to stay on task. The school psychologist confirmed Claimant's eligibility for special education services under the category of specific learning disability, with deficits in auditory processing and association, conceptualization and expression, but with no observed psychological processing disorder.

5. On December 10, 2014, the school district convened a meeting to develop an initial Individualized Education Plan (IEP) for Claimant’s special education services. (Exhibit 9) The IEP refers to results of one of the standardized tests administered to Claimant – the Woodcock Johnson III, a test of cognitive abilities that compares results with age and school grade equivalents. Claimant was age eight years, six months, and in the third grade, when he took the test. He received the following scores:

<u>Subject</u>	<u>Age Equivalent</u>	<u>Grade Equivalent</u>
Brief Achievement	6 years, 9 months	1.5
Broad Reading	7 years, 0 months	1.7
Brief Reading	7 years, 0 months	1.7
Broad Written Language	7 years, 2 months	1.8
Brief Writing	7 years, 2 months	1.8
Written Expression	7 years, 5 months	2.1
Broad Math	6 years, 1 months	K.8
Brief Math	6 years, 0 months	K.7
Math Calc Skills	6 years, 3 months	1.0

These results were described as very low compared to his age peers. Claimant’s native language is Spanish, and he was given the Bateria test of oral language and reading. The results were mixed, with some subjects scored above, and some below, his actual age and grade level. Claimant was placed in a general education classroom with various support services and accommodations, and specific goals. The IEP listed the same discrepancies and disorders as in the report from the UCLA Community School and the psychoeducational assessment. Further, the IEP team agreed that the discrepancies were not primarily the result of social maladjustment, mental retardation, or other listed conditions.

6. Maria Tapia-Montes has worked for the Service Agency for over 20 years. She helped gather relevant documents relating to Claimant and performed an intake interview with Claimant’s mother. The information gathered is summarized in a Psychosocial Report (exhibit 5), and was also the subject of testimony by Tapia-Montes. The information gathered included family history, Claimant’s birth and developmental history, medical history, educational history, and comments on Claimant’s current functioning. Of note, these comments include that Claimant has poor verbal communication skills, that he does not share toys and prefers to play alone, is not physically aggressive but, when he does not get his way, asks his mother if she wants him to hit her, and depends on his mother for many needs. Tapia-Montes was part of the Service Agency’s eligibility team, discussed in more detail below.

7. Dr. Thomas Carillo is a psychologist who is vendored by the Service Agency. He performed a psychological evaluation on June 3, 2006, when Claimant was age eight years, nine months. The results are summarized in his report (exhibit 6). Dr. Carillo was asked to evaluate Claimant for possible eligible conditions of intellectual disability (previously referred to as mental retardation) and/or autism. He reviewed documents,

including the school district's psychoeducational evaluation, the IEP, and a note summarizing medical records.

8. Dr. Carillo administered to Claimant numerous standardized tests, with the following notable results. The Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) is an intelligence test that measures a child's Full Scale IQ (intelligence quotient) with reference to five areas tested. Claimant scored as follows: Verbal, 76; Perceptual Reasoning, 85; Working Memory, 107; Processing Speed, 83; and Full Scale, 83. The Wide Range Achievement Test-Revision Four was also administered to measure cognitive ability. These results were compared to the WISC-V results and indicated Claimant's cognitive abilities are within the low normal range.

9. Communication abilities were tested by use of the Communication portion of the Vineland Adaptive Behavior Scales-II (VABS-II), yielding a Standard Score of 74, which is within the borderline range. He received a Receptive Language age equivalent of 2 years, 6 months and an Expressive Language age equivalent of 4 years, 4 months (with a chronological age of 8 years, 9 months). Dr. Carillo determined these results suggested that Claimant's communication skills are within the borderline range of delay. Adaptive and social skills, and socialization, were also assessed using the VABS-II. Claimant received Standard Scores of 79 (daily living skills) and 71 (socialization), in the borderline range of delay. The Adaptive Behavior Composite of all areas tested was 73, in the borderline range of delay. Dr. Carillo commented that Claimant presented with slightly delayed cognitive skills and more significantly delayed adaptive skills, and with some autistic-like characteristics, such as a hypersensitivity to smell. Claimant was screened for an Autism Spectrum Disorder, including use of the Gilliam Autism Rating Scale-Second Edition where he received an Autism Index Score of 60, which indicated the unlikely probability of Autism Spectrum Disorder. Dr. Carillo noted that Claimant did not display any other behaviors associated with Autism and therefore did not meet the criteria for Autism Spectrum Disorder.

10. Upon consideration of all of the material reviewed and the psychological evaluation, Dr. Carillo made a diagnosis of Language Disorder, noting that Claimant had borderline adaptive abilities and cognitive abilities within the low normal range.

11. Hasmig Mandossian has worked for the Service Agency for more than 30 years and is presently the Assistant Director of Intake and Assessment, and oversees the Autism Team. She was on the team that evaluated Claimant's eligibility, which also included Tapia-Montes, a medical consultant and a psychologist. Mandossian is familiar with the conditions that make a person eligible for regional center services. The members of the eligibility team reviewed the information submitted by Claimant's mother and the other relevant documents, evaluations and reports, and determined that Claimant does not suffer from a developmental disability that would make him eligible for regional center services. Mandossian estimated that she has been on the eligibility team for thousands of eligibility determinations and that at least 50 percent of the time, and probably more, eligibility is found.

12. On July 13, 2015, an informal meeting was held to see if the matter could be resolved. The Service Agency's participant was Rose Chacana, Director of the Koch Young Resource Center. Chacana summarized the meeting in her letter (exhibit 4), including various concerns raised by Claimant's mother such as problematic behaviors, lack of academic progress, medical complications, and questions about possible autism. Chacana determined that Claimant was not eligible for regional center services.

13. Claimant's mother testified about various behaviors of Claimant that are troubling to her, such as repeated questions, failure to follow the teacher's instructions, and lack of understanding of time periods such as a day, week, or month. Claimant occasionally uses aggressive conduct, including pushing another child at an after school program. As a result the program decided that Claimant could no longer attend. In another incident Claimant grabbed the neck of his four year-old brother. Claimant's mother noted that he will not let others care for him at times and expresses anxiety about this. He recently wandered from the home of a cousin back to his home, without asking permission or notifying anyone.

LEGAL CONCLUSIONS

1. Claimant is not entitled to regional center services.
2. Claimant bore the burden of proof in this case. The standard of proof is a preponderance of the evidence. Claimant failed to sustain his burden of proof.
3. Welfare and Institutions Code section 4512, subdivision (a) states:

“Developmental disability” means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.
4. California Code of Regulations (CCR), title 17, section 54000 also defines a developmental disability, contains the same criteria as Welfare and Institutions Code section 4512, but also excludes conditions that are:

(c)(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation

and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. . . .

5. The three exclusions from the definition of “developmental disability” under CCR, title 17, section 54000 are further defined therein. Impaired intellectual or social functioning which originated as a result of a psychiatric disorder, if it was the individual’s sole disorder, would not be considered a developmental disability. “Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have been seriously impaired as an integral manifestation of the disorder.” (CCR, tit. 17, § 54000, subd. (c)(1).) Similarly, an individual would not be considered developmentally disabled if his/her only condition was a learning disability (a significant discrepancy between estimated cognitive potential and actual level of educational performance) which is not “the result of generalized mental retardation, educational or psycho-social deprivation, [or] psychiatric disorder” (CCR, tit. 17, § 54000, subd. (c)(2).) Also excluded are solely physical conditions such as faulty development, not associated with a neurological impairment, that result in a need for treatment similar to that required for mental retardation.

6. To be eligible for regional center services, an individual must not only have one of the developmental disabilities listed above. The disability must also be a “substantial disability,” which is defined in CCR, title 17, section 54001, subdivision (a). For the purposes of this decision it is not necessary to apply this definition.

7. To answer the question of Claimant’s eligibility, several requirements must be met. At any point, a failure to satisfy a requirement will result in a conclusion of no eligibility. If all requirements are satisfied, eligibility is found, unless the Service Agency establishes one of the exclusions.

8. The Service Agency based its determination that Claimant was not eligible for regional center services primarily on the lack of evidence meeting the criteria for Intellectual Disability and Autism Spectrum Disorder.

9. Psychometric testing results and interviews and observations by trained psychologists show Claimant to be in the low normal and/or average range of intelligence, above the threshold for a finding of Intellectual Disability. Testing and observation did not

support a finding of Autism Spectrum Disorder. There was insufficient evidence that Claimant has a developmental disability that would make him eligible for services from the Service Agency. Rather, the observations, testing and reports of the school district and the Service Agency support the conclusion that Claimant suffers from a learning disorder and a language disorder.

ORDER

Claimant has not established his eligibility for regional center services. Claimant's appeal of the Service Agency's determination that he is not eligible for services from the Service Agency is denied.

Dated: September 3, 2015

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.